

CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

FINDING OF EMERGENCY

Emergency facts and necessity statements

The California Legislature passed Senate Bill 670 (2019 – 2020) (SB 670), which was approved by the Governor and chaptered by the Secretary of State on October 2, 2019. The new law added section 53122 to the Government Code as an urgency statute to take effect immediately, and requires telecommunications service providers to, among other things:

- notify the California Governor's Office of Emergency Services (Cal OES) of a community isolation outage within 60 minutes of discovery of the outage;
- include in the notice the telecommunications service provider's contact name, calling number, and a description of the estimated area affected by the outage and the approximate communities, including cities, counties, and regions, affected by the outage;
- notify Cal OES of the estimated time to repair the outage and, when achieved, the restoration of service; and
- ensure that the calling number provided to Cal OES with the notice is staffed by a contact person who shall be available to respond to inquiries about the outage at all times until the provider notifies Cal OES that services have been restored.

In addition, Government Code section 53122 requires Cal OES to adopt regulations that (1) set thresholds for determining whether a telecommunications service outage constitutes a community isolation outage based on the risks to public health and safety resulting from the outage, and (2) specify the medium by which telecommunications service providers notify Cal OES. The new provision of law also sets specific time periods by which

regulations must be in place, and provides that the reporting requirements will not become effective until Cal OES adopts the required regulations.

Specifically, Government Code section 53122, subdivision (b) requires that Cal OES issue the notice required by Government Code section 11346.5 by January 1, 2020, and adopt regulation on or before July 1, 2020. Furthermore, and “[n]otwithstanding any other law,” Government Code section 53122, subdivision (b) provides that Cal OES “may issue emergency regulations in accordance with the process of Section 11346.1 if necessary to meet” the July 1, 2020, deadline.

In enacting SB 670 as an urgency statute, the California Legislature made express findings that the statute is necessary “for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution,” finding:

In order to ensure that regulations addressing community isolation service outages, which can endanger the public’s health and safety by limiting the public’s ability to make 911 calls or receive emergency notifications, are in place for the 2020 fire season, it is necessary for this act to take effect immediately.

Cal OES has been, and continues to be, in compliance with the Administrative Procedures Act (APA) rulemaking process within the timelines specified by Government Code section 53122. In particular:

- The need for improved outage reporting causing community isolation outages was well known to Cal OES prior to the passage of SB 670, and Cal OES had worked informally with stakeholders to assess the needs of the State emergency management relative to such outages before any mandate existed for reporting community isolation outages.
- On December 20, 2019, Cal OES issued a Notice of Proposed Rulemaking in compliance with the Administrative Procedure Act, opening a 45-day written comment period through February 4, 2020. Cal OES also held a public hearing on February 4, 2020, to accept and consider additional comments. The notice was published in the California Regulatory Notice Register, December 20, 2019, Number 51-Z, at pages 1691 – 1694, notice file number Z-2019-1210-04, sent to all interested parties, and was posted on Cal OES’s website along with the proposed text of the regulations and Initial Statement of Reasons.
- After the close of the comment period and public hearing, Cal OES carefully reviewed the submitted comments, made further modifications

to the proposed text, and provided notice to the public and all interested parties on March 16, 2020. The notice provided an additional written comment period through April 1, 2020. The notice and modified text were also posted to Cal OES's website.

- After the close of the additional 15-day written comment period, Cal OES carefully reviewed the submitted comments, and in response to those comments made further modifications to the proposed text of the regulations. Cal OES provided notice to the public and all interested parties on May 12, 2020, with an additional written comment period through close of business on May 28, 2020. The notice and modified text were also posted to Cal OES's website.
- Cal OES's notices, described above, are currently available online at: www.caloes.ca.gov/sb670.

Despite Cal OES's adherence to the rulemaking process in the APA, Cal OES will not be able to adopt regulations by July 1, 2020, unless Cal OES adopts the regulations as emergency regulations, as permitted by Government Code section 53122. In addition, the Office of Administrative Law (OAL) and state agencies throughout California have been impacted by the unprecedented emergency conditions created by the COVID-19 pandemic. As a result, the Governor has issued various Executive Orders, including orders that extend the time period afforded to state agencies and OAL relative to certain rulemaking matters. (See Executive Order N-40-20.) In light of these unprecedented conditions, and mindful that OAL may require an extended period of time to review formal rulemaking submissions, Cal OES must enact the present regulations as emergency regulations.

For the above reasons, an emergency exists such that adoption of these emergency regulations is necessary.

ADDITIONAL NECESSITY STATEMENTS SPECIFIC TO REGULATORY PROVISIONS

As set forth above, promulgating emergency regulations is necessary to meet the statutory deadline established by SB 670. Cal OES is currently engaged in a rulemaking process, but will not be able to complete that process by July 1, 2020. Therefore, temporary regulations are necessary while Cal OES completes the regular rulemaking process.

Cal OES proposes to adopt as emergency regulations the provisions that are substantially similar to the further modified text of the regulations noticed to the public in notice number Z-2019-1210-04. While the published Initial Statement of Reasons in that rulemaking matter set forth the reasons for each of the initially-

proposed provisions, the text of the proposed regulations has undergone a series of modifications following receipt and consideration of public comments submitted during an initial 45-day comment period and public hearing, and two subsequent 15-day written comment periods. The last version of the modified regulations publicized in notice number Z-2019-1210-04 reflected changes made in response to comments received through the close of the first 15-day comment period.

These emergency regulations take into account additional comments submitted during the second 15-day written comment period, which ended at 5:00 p.m. on May 28, 2020. The text of the emergency regulations make one substantive change to the last version of the modified regulations. This substantive change eliminates a proposed provision that was not included in the originally-noticed regulations, but was proposed to be added in a modified version of the regulations after considering public comments. As such, none of the text of the proposed emergency regulations introduce new provisions that were not already noticed to the public and subject to public comment.

The following paragraphs provide statements of necessity for each emergency regulatory provision. To improve the clarity of the below necessity statements, the statements include reference to submitted public comments, where appropriate. Cal OES will provide a complete summary and responses to the public comments submitted for notice number Z-2019-1210-04 in the final statement of reasons.

Section 5001

The purpose of section 5001 is to establish definitions applicable to the new chapter of regulations. Establishing common terminology is necessary to avoid conflicting definitions, and to promote clarity and consistency. In particular:

- The definition of “community isolation outage” is necessary to further the purpose of SB 670 by specifying that the term is defined in reference to reportable thresholds for community isolation outages.
- The definition of “outage” is necessary to clarify the reportable thresholds are based on the type of outages described in Government Code section 53122. In particular, outages that affect the ability of end user to make 911 calls or receive emergency notifications. This definition is informed by public comments submitted to Cal OES in notice number Z-2019-1210-04.
- The definition of “telecommunications service” is necessary to clarify that the regulations utilize the same definition established by SB 670, the authorizing statute for the regulations themselves.

- The definition of “ZIP Code” is necessary to define the scope of the an otherwise universally-understood term. In particular, because ZIP Codes are included as part of the threshold determination for whether an outage constitutes a community isolation outage, the proposed definition specifies the term does not include ZIP Codes associated with a single physical address, or Post Office Box. Those ZIP Codes, for purposes of the regulations, are deemed to be part of the nearest ZIP Code that is neither a Post Office Box or a ZIP Code affiliated with a single physical address. This definition is informed by public comments submitted to Cal OES in notice number Z-2019-1210-04.

In addition, the initially-proposed Section 5001 was modified following public comment seeking an exception for outages caused by telecommunications service providers' schedule maintenance activities. The definition is removed from the proposed emergency regulations, as described below concerning Section 5002.

Section 5002

The purpose of section 5002 is to specify outage thresholds affecting access to 9-1-1 services or the ability to receive emergency notifications that require notification to Cal OES.

Subdivision (a)

Government Code section 53122 requires outage thresholds to be set in a manner that ensures any impairment to a community's ability to make 911 calls or receive emergency notifications that pose risks to the public health and safety by reported to Cal OES. This provision is necessary to ensure those outages that could isolate communities are appropriately reported to Cal OES and thereafter forwarded to any applicable county office of emergency services, the sheriff of any county, and any public safety answering point affected by the outage. In establishing the minimum number of potentially affected individuals, the proposed regulations are intended to strike an appropriate balance for determining when an objective criteria may be indicative of a threat to public health and safety, without setting the threshold so low that outage reports would serve no useful purpose. The proposed thresholds also identify a minimum duration of time an outage must last for the affected individuals before it would be considered a community isolation outage, such that outages of very short durations are not required to be reported. The time period before an outage mirror the time period in federal

threshold criteria for reporting significant outages impacting the communications infrastructure.

This provision also identifies, by subdivision paragraphs, four types of outages that constitute community isolation outages and must be reported. Cal OES received robust public comments in response to the initially-proposed thresholds and the modified text of the regulations in notice number Z-2019-1210-04. Cal OES gave careful consideration to those comments, and proposes these emergency regulations taking those comments into account, as described in more detail below.

Paragraphs (1) – (3) define outages according to the type of service being provided. This separation is necessary to define thresholds taking into account fundamental differences in how the services are provisioned and operate, and to contemplate future flexibility if thresholds for a specific type of service need to be changed to reflect developments in that type of service.

Paragraph (1) defines reportable thresholds for facilities-based carriers, other than mobile telephone service or Voice over Internet Protocol service. These thresholds are established in reference to the duration of the outage and a baseline number of individuals affected within an identifiable geographic area. Structuring the threshold in this manner is necessary to ensure outage thresholds are appropriately tailored to respond to potential risks to public health and safety to geographically dense, and to geographically dispersed communities. Existing threshold criteria for major outage reporting in other contexts, namely FCC and CPUC requirements, serve different purposes and are not specifically tailored to the requirements of Government Code section 53122, which mandate outage reporting when outages isolate communities and inhibit their ability to make 9-1-1 calls or receive emergency notifications. Government Code section 53122 was enacted to address gaps not addressed by existing reporting requirements, including the need to ensure outages affecting residents in rural and semi-rural communities are reported.

In establishing the minimum number of potentially affected individuals and the minimum duration of the outage, this provision intends to strike an appropriate balance for determining when objective criteria may be indicative of a threat to public health and safety, without setting the threshold so low that outage reports would serve no useful purpose for county office of emergency services, county sheriffs, or public safety answering points. The minimum duration of the outage is necessary to ensure timely reporting of outages, and is consistent with similar federal threshold criteria for significant outages. In addition, including a ZIP Code as an element of the criteria ensures outage thresholds appropriately

address the needs of residents of rural and semi-rural communities, as well as densely populated areas. Further, the ZIP Code is a well-known and commonly used identifier.

Cal OES received a variety of public comments regarding an appropriate threshold of affected end users. Some comments suggested the proposed threshold was too low, and would result in an inundation of outage reports to Cal OES. But the comments did not provide evidence about how many such outages actually occur, or why such outages would not create a public safety risk. Another comment suggested an alternative threshold of 300 end users, and another comment suggested a threshold of 50. Taking into account the public comments and the judgment and expertise of Cal OES's CA 9-1-1 Emergency Communications Branch, Cal OES continues to believe an outage potentially affecting at least 100 end users strikes an appropriate balance for determining when objective criteria may be indicative of a threat to public health and safety, without setting the threshold so low that outage reports would serve no useful purpose for county office of emergency services, county sheriffs, or public safety answering points. However, informed by helpful comments about communities comprised of fewer than 100 individuals, this threshold may miss certain outages that impact smaller communities. For that reason, the proposed regulations also cover ZIP Codes with fewer than 100 end users, and for those ZIP Codes impose a threshold of at least 50% of the end users in the ZIP Code.

The threshold also identifies a minimum duration of an outage at 30 minutes. This period of time is necessary to ensure timely reporting of outages, and is a period of time familiar to regulated entities and already used for other reporting purposes, such as federal criteria for reporting significant outages.

Paragraph (1) formerly included, in the modified text of the regulations, an exception for outages caused by scheduled maintenance. The proposed emergency regulations do not include this exception. The exception was proposed to be added in response to public comments received during the initial 45-day comment period requesting the exception. Cal OES believed such an exception to otherwise reportable outages may be allowable and consistent with the purpose of SB 670, but only if appropriate safeguards were in place to guard against the public safety risks that result from outages. In particular, if end users had sufficient, advance knowledge about when and for how long they would be unable to receive emergency notifications, that knowledge could serve to mitigate the risks caused by the outage by adequately preparing affected end users. In those circumstances, reporting would not be necessary because the end users directly affected by the outage would be able to take

steps to prepare for their own safety during the outage, including arranging for alternate means of accessing 9-1-1.

Cal OES made proposed modifications to the text of the regulations adding a definition and exception for outages caused by scheduled maintenance, and invited additional public comment. The scope of this limited exception was the subject of considerable public comment, both in the 15-day comment period, and the second 15-day comment period. The submitted comments indicated considerable confusion over the limited exception. For example, some comments misunderstood the exception as an affirmative regulatory mandate governing providers' notification practices, even though nothing in the proposed regulations would have mandated any end user notification practices. Other comments worried that no workable limiting principle existed, and urged Cal OES to adopt a blanket exception for scheduled maintenance, no matter the duration, and without regard to whether a provider's customers had any knowledge of being cut off from accessing 9-1-1 services or receiving emergency notifications. Another comment urged the importance of requiring customers to receive advance notice of outages, and asked that if providers are unable to notify customers, they should at least notify Cal OES.

Taking into account the submitted comments, Cal OES anticipates any proposed scheduled maintenance exception would run contrary to the purpose of SB 670. Cal OES believes the underlying cause of an outage is irrelevant for community isolation outage threshold purposes. The scheduled maintenance exception was originally contemplated as permissible if providers choosing to avail themselves of that exception assumed a degree of responsibility for putting their end users on appropriate notice of the impending outage, such that the end users could take preparatory steps to mitigate the risk caused by the outage. Public comments from the regulated industry indicated confusion over this exception, as well as an inability for providers to utilize the exception.

The text of the emergency regulations therefore eliminates the proposed exception, and in that respect the proposed emergency regulations are restored to the initially-proposed regulations, which contained no such exception. The emergency regulations also eliminate a threshold previously included in paragraph (4) that was specific to scheduled maintenance outages. In doing so, the proposed emergency regulations are easier to understand, and simpler to apply. In addition, the proposed emergency regulations improve clarity by eliminating worry that the regulations mandate any particular notification process as to end users.

Cal OES also received considerable public feedback regarding using a ZIP Code as geographic reference point. The ZIP Code is a well-known and commonly used identifier for geographic areas, will ensure the threshold criteria appropriately address needs of communities in rural and semi-rural areas, as well as communities in densely-populated areas. Cal OES carefully considered the various public comments relative to the ZIP Code, and proposed emergency regulations retain the ZIP Code as part of the threshold. As mentioned above regarding Section 5001, the definition of ZIP Code was modified to accommodate concerns about ZIP Codes that are associated with Post Office Boxes or only one physical address, such as a single building.

Regarding use of a ZIP Code at all for outage reporting purposes, Cal OES will set for its responses each of the submitted comments in more detail in the Final Statement of Reasons for notice number Z-2019-1210-04. Briefly, comments about using the ZIP Code included the following objections and suggestions:

- ZIP Codes do not bear a logical relationship to network facilities.
- Cal OES should mirror thresholds used by the FCC and CPUC.
- ZIP Code thresholds would be difficult to implement.

Cal OES considered these and other comments, and determined the ZIP Code threshold is the most effective and reasonable geographic metric for outage threshold purposes. As explained in the first notice and Initial Statement of Reasons published and distributed on December 20, 2019, in notice number Z-2019-1210-04, SB 670 created new reporting obligations in part to address gaps not addressed by existing frameworks. SB 670 was enacted to further the State's interest in protecting public health and safety, and to guard against the risks to public health and safety caused by outages that isolate communities. Existing threshold criteria for significant outages, as set out by the FCC, address outages impacting the overall security and reliability of the communications infrastructure. Those thresholds are far too high to further the purpose of SB 670 because they would fail to capture a wide range of outages that isolate communities from 9-1-1 services and emergency notifications. Cal OES believes a threshold tied to ZIP Codes, on the other hand, is sufficiently granular to further the purpose of SB 670.

Comments objecting that ZIP Codes bear no logical relationship to network facilities misunderstand the mandate of SB 670, which is to identify outages that isolate communities. ZIP Codes bear logical relationships to geographic places where California residents access and use services. In addition, the ZIP Code is a commonly-used identifier that is universally understood, which will make

notifications actionable for Cal OES and recipients of the notices, such as county sheriffs.

Cal OES received several comments about implementation, including by requesting extensions of time for the regulations to become effective. Each of these comments misunderstand the purpose of SB 670 and the scope of Cal OES's regulations. SB 670 established the scope of the duty to report community isolation outages, which includes a mandate to report an outage to Cal OES within 60 minutes of discovery of the outage. Cal OES must, by regulation, define the thresholds for determining when an outage constitutes a community isolation outage.

Cal OES understands the primary objections by regulated entities regarding implementation is they do not currently have an efficient means of readily identifying when their end users are without service at the level of specificity defined by the regulations. Whether or not a provider knows an outage has isolated a community, however, is irrelevant to whether a community is in fact isolated and unable to call 9-1-1 or receive emergency notifications.

Paragraph (2) defines reportable outage thresholds for Voice over Internet Protocol (VoIP) or Internet Protocol enabled service. These thresholds mirror the reportable thresholds for paragraph (1), but are expressed separately to clearly identify thresholds according to the type of service provided, and to provide future capability to amend thresholds specific to one type of service, without needing to later separate the thresholds. The reasons for the specific thresholds are the same as those identified above for paragraph (1).

Paragraph (3) defines reportable outages for mobile telephony service. Unlike wireline or VoIP communications, wireless communications depend on the ability of wireless infrastructure to provide coverage within the geographic areas of the wireless infrastructure. Individual users of wireless communications services do not originate or receive calls from fixed locations, and may travel throughout the state. Because of these features of mobile telephony service, significant degradation within any coverage area poses a risk to public health and safety, regardless of how many individuals may or may not be able to access the service. The proposed regulations intend to identify appropriate, identifiable, and measurable criteria that reasonably indicates a limitation to make 9-1-1 calls or receive emergency notifications that poses a risk to public health and safety. The proposed threshold of 50% of a carrier's coverage within a ZIP Code is a reasonable metric. The threshold also identifies a minimum duration of an outage at 30 minutes. This period of time is necessary to ensure timely reporting or outages, and is a period of time familiar to regulated entities and already

used for other reporting purposes, such as federal criteria for reporting significant outages.

Paragraph (4), which was formerly paragraph (5) in the further modified text of the regulations, defines, as a reportable threshold, an outage determined by Cal OES to be a community isolation outage, where Cal OES identifies the ZIP Code or ZIP Codes where the outage is believed to exist, and provides notice of its determination and the ZIP Code(s) to a provider. This provision is necessary to address circumstances where a provider may not yet be aware of an outage, but where Cal OES learns information indicative of a community isolation outage. Upon Cal OES providing notice of its determination, the provider will be deemed to have discovered an outage, and will need to comply with the reporting requirements.

Subdivision (b)

This provision clarifies that providers may submit a notice to Cal OES whenever a provider suspects or believes a community isolation outage exists, even if the technical threshold is not met. This is necessary to clarify the requirements under the regulations, and to encourage providers to submit notice of suspected outages even if the provider has not gathered the necessary information to determine the threshold criteria have been met, but has reason to believe an outage is a community isolation outage.

Section 5003

The purpose of this section is to specify the medium by which providers of telecommunications service must provide notice to Cal OES to ensure Cal OES receives timely, accurate, and reliable information in a consistent format.

Subdivision (a) is necessary to specify a single email address where notices are to be submitted electronically. The subdivision also provides that notice will be made by a form prescribed by Cal OES. The originally-proposed regulations included a form as part of the regulations. In response to public comments requesting Cal OES to enable reporting via an online system, Cal OES determined the method of reporting should enable providers, at their option, to instead use an alternative online submission upon Cal OES implementing an alternative online method. Commensurate with this change, Cal OES will not adopt a form as a regulation, to ensure flexibility in the content of the form in the event an alternative, online submission method is created.

Subdivision (b) is necessary to provide an additional layer of notice to Cal OES that a notice was submitted. Specifically, the provision requires telephonic

confirmation of delivery only for initial community isolation outage notifications. This provision was in response to, and informed by, public comments.

Subdivision (c) is necessary to interpret the requirements of Government Code section 53122 to simplify outage reports and to maintain consistency. Specifically, the provision provides a ZIP Code with an associated, readily-identifiable descriptive term that will enable validation of the ZIP Code is an appropriate proxy for the statutory requirement to include “a description of the estimated area affected by the outage and the approximate communities, including cities, counties, and regions, affected by the outage.”

Subdivision (d) is necessary to ensure efficiency in reporting requirements mandated by Government Code section 53122 that notification to Cal OES include “the estimated time to repair the outage” and “when achieved, the restoration of service.” In particular, Government Code section 53122, subdivision (d), requires that providers be available to respond to inquiries at all times about an outage. This provision establishes a baseline period of time deemed to constitute an inquiry, such that even where Cal OES does not affirmatively inquire about the status of an outage, a provider must, at a minimum, provide updated notifications at least once every 6 hours from the most recent notification until service has been restored, and a final notification once the service has been restored. This provision will increase efficiency and reduce the need for Cal OES staff to manually inquire once every six hours.

LIST OF DOCUMENTS RELIED UPON

In proposing these emergency regulations, Cal OES relied all documents in the current rulemaking file in notice file number Z-2019-1210-04, which consists of the following:

- Notice of Proposed Rulemaking and notice form STD. 400
- Text of Proposed Regulations initially noticed to the public.
- Initial Statement of Reasons
- Written comments submitted during 45-day comment period
- Audio comments recorded at the February 4, 2020, public hearing
- Notice of Modifications to Text of Proposed Regulations
- Modified Text of Proposed Regulations
- Comments submitted during the first 15-day comment period
- Notice of Notice of Modifications to Text of Regulations regarding further modifications to proposed text of regulations.
- Modified Text of Proposed Regulations
- Comments submitted during the second 15-day comment period

- Cal OES also relied on published laws and regulations relative to this subject matter, including the enacting legislation (Sen. Bill. No. 670 (2019 – 2020)) and legislative analyses published by the Legislature. Cal OES also reviewed other regulations relating to telecommunications outages, California Public Utilities Commission (CPUC) General Order 133-D, and CPUC Decision 16-08-021.
- Executive Order N-40-20

AUTHORITY AND REFERENCE

Government Code sections 8585 and 53122 authorize Cal OES to adopt the proposed regulations. The proposed regulations implement, interpret, and make specific Government Code section 53122.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action implements, interprets, and makes specific thresholds for determining whether a telecommunications service outage constitutes a community isolation outage, and the medium providers of telecommunications service must report community isolation outages to Cal OES.

While existing Federal Communications Commission (FCC) and California Public Utilities Commission (CPUC) impose certain reporting requirements for major telecommunications service outages, they are not specifically tailored to address risks to public health and safety resulting from outages that limit access to 9-1-1 or emergency notifications. For example, reporting is generally not required unless the outage affects at least 900,000 user minutes. As a result, significant outages affecting rural communities may not be reported, leaving those residents at risk of not being able to call 9-1-1 or receive emergency notifications. Similarly, the CPUC requires certain periodic reports pursuant to its General Order 133-D, including out-of-service reporting. But these reports are submitted long after reportable events occur, and are not intended to provide the type of information needed to support situational awareness near in time to outages.

SB 670 created Government Code section 53122, which requires providers of telecommunication services to notify Cal OES of community isolation outages within specified timeframes, and to include specific information with the notices, among other requirements. Government Code section 53122 requires Cal OES to adopt appropriate thresholds for determining when an outage constitutes a community isolation outage, and the medium for reporting outages to Cal OES.

Anticipated Benefits of the Proposed Regulations

The objective of the proposed regulations is to further the purpose of SB 670 and to ensure community isolation outages are deemed to exist at a reasonable threshold so that state and appropriate local agencies receive timely notification whenever a community's public health and safety is at risk because of an outage impacting the ability access 9-1-1 or emergency notifications. The regulations are specifically anticipated to increase public health and safety in California by increasing the sharing of timely information critical to the protection of lives and property when access to 9-1-1 and the ability to receive emergency notifications is limited by an outage.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations, and Differences with Federal Regulations:

Cal OES conducted a review of existing regulations and determined the proposed regulations are not inconsistent or incompatible with existing regulations. SB 670 was enacted in part to address needs that are not met by any regulations potentially governing reporting outage requirements, and the proposed regulations are not incompatible or inconsistent with existing requirements.

In particular, the CPUC requires certain outage reports, as specified in its General Order 133-D. In its order, the CPUC adopted portions of the Federal Communication Commissions (FCC) rules in Code of Federal Regulations, title 47, part 4, for reporting major service interruptions. FCC rules establish criteria for major service disruptions with respect to total user minutes impacted by an outage, and outages that affect certain offices and facilities. (See 47 C.F.R. §§ 4.3 – 4.15.) These regularly requirements are "pertinent to the reporting of disruptions to communications and to the reliability and security of communications infrastructure." (47 C.F.R. § 4.1.)

Because SB 670 requires establishing thresholds specifically tailored to the impact outages have on customers' ability to access 9-1-1 or receive emergency notifications and the risks to public health and safety caused by those outages, the proposed regulations adopt a threshold at a granular level sufficient to detect threats to the public safety of communities. In particular, the proposed reporting requirements are triggered when a threshold number of end users within ZIP Code are experience an outage lasting at least 30 minutes, or when mobile coverage declines below a threshold percentage in a given ZIP Code. The thresholds do not purport to impose particular monitoring requirements, or to define a particular method or technology any provider must

employ in monitoring the provisioning of its own services. These thresholds are compatible with existing regulations because they do not create conflicting obligations, and are not anticipated to require the utilization of any new technology, or to impose any additional duties that are not already mandated by existing regulations and the provisions of law added by SB 670. Notably, while Cal OES received some comments suggesting telecommunications service providers do not currently have a mechanism in place for detecting when the proposed thresholds would be met, none of the submitted comments described particular facts demonstrating an inability to detect when such thresholds are met.

The proposed regulations are neither duplicative of, nor in conflict with, federal regulations. As noted above, SB 670 was enacted because no existing outage threshold existed that was tailored to address the risks to public health and safety caused by community isolation outages. As a result, the needs of SB 670 differ from the needs addressed by existing federal regulations pertaining to outages affecting the communications infrastructure. As relevant for purposes of these proposed regulations, FCC requirements typically involve reporting outages when a high volume user minutes is impacted by the outage, and when the outage lasts at least 30 minutes. The proposed regulations do not duplicate federal regulations because they establish thresholds, for purposes of Government Code section 53122 reporting requirements, with respect to a volume of people impacted in a geographic area for more than 30 minutes. These requirements do not conflict with federal regulations, and where possible use common terms that are universally understood by regulated entities that are consistent with definitions of terms used in federal regulations relating to service outages.

DISCLOSURES REGARDING THE PROPOSED ACTION

Cal OES has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: Cal OES is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The proposed regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Effect on small business: The proposed action will not affect small businesses because the authorizing statute establishes compliance requirements that may apply to any business, and Cal OES is unaware of any business constituting a small business that may be affected by the proposed regulations.

Significant effect on housing costs: None.

CAL OES CONTACT PERSON

Inquiries regarding the proposed regulatory action may be directed to:

Michael Elder, Next Generation 9-1-1- Manager
Governor's Office of Emergency Services
CA 9-1-1 Emergency Communications Branch
601 Sequoia Pacific Blvd.
Sacramento, CA 95811
(916) 657-9882
Regulations@CalOES.ca.gov

AVAILABILITY ONLINE

This notice, along with the full text of the proposed regulations, is available online at www.caloes.ca.gov/sb670.